HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP. No. 1228 Year 2003 (SS)

Amar Dev Joshi vs. State of Uttaranchal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 15.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1228 of 2003 (S/S)

Amar Dev Joshi son of Sri Ram Prasad
R/O D-287, Tons Colony,
Dakpathar, District Dehradun ……Petitioner

Versus

1. State of Uttaranchal
2. Superintending Engineer, Lakhwar
   Vyasi Construction Division, Dehradun
3. Executive Engineer, Lakhwar Vyasi
   Construction Division, Dakpathar
4. Chief Engineer, Yamuna Ghati Pariyojna
   Irrigation Department, Dehradun ……..Respondents

Sri J.P. Joshi, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: October 15, 2003

Hon'ble Rajesh Tandon, J.

By the present Writ Petition the petitioner has prayed for a writ, in the nature of mandamus commanding the respondent to promote the petitioner to any suitable post subject to the qualification of the petitioner and for salary of promotional post since the petitioner was eligible for appointment on such post.

Brief facts giving rise to this writ petition are that the petitioner's father was serving in Irrigation Department who expired during the service in the year 1986. The petitioner applied for service

under Dying in Harness Rules 1974 and he was appointed on 3.2.1987 in Class IV in the pay scale of 305-330 on the post of Runner. After his appointment in class IV post petitioner started representing the department for his appointment promotion on the appropriate post according to his qualification.

The petition has relied upon Dying in Harness Rules 1974 where sub Clause II provides that an appointment under these rules will be only for existing vacancies. The contention of the petitioner is that in 1991 Rule 8 (3) was amended and by virtue of amendment. The amended rule is quoted below:

उक्त नियमावली के नियम 8 में उप नियम 3 के स्थान पर निम्नलिखित उप नियम रख दिया जायेगा अर्थात :

3. इस नियमावली के अधीन कोई नियुक्ति विद्धमान रिक्ति में की जायेगी प्रतिबन्ध यह है कि यदि कोई रिक्ति विघमान न हो तो नियुक्ति तुरन्त किसी ऐसे अधिसंख्य पद के प्रति की जायेगी जिसे इस प्रयेाजन के लिए सृजित किया गया समझा जायेगा और जो तब तक चलेगा जब तक कोई रिक्ति उपलब्ध न हो जाय।

From the aforesaid amendment from 12th August 1991, it will appear that the appointment was to be made on the existing vacancy. Admittedly the petitioner was appointed on the post of class IV on the basis of compassionate ground in the year 1987. He represented for promotion in class III post. The case of the petitioner is that a recommendation was also made on 24.8.1992. The Executive Engineer has forwarded the case of the petitioner to the Superintending Engineer for consideration according to the educational qualification of the petitioner. The petitioner has also stated that he has made representation to the respondents on 29.9.2003.

After hearing the counsel for the petition and the Standing Counsel for the respondents I am of the opinion that appointment on compassionate ground is not available to the petitioner as

appointment is made due to extreme urgency at the relevant time in order to feed back the family members.

The Apex Court in 1997 Vol. II SCC page 390 has held that so far as the compensonatary appointment is concerned it is immediate shelter which has been given to the family of the deceased employee. The observations of the Apex Court are quoted below:

"In our opinion. Rule 18 of the Rules confers a discretion on the Chairman/ Director (Personnel) to appoint a direct dependant of a regular employee who dies in harness or is permanently disabled while in the service. It is no doubt true that this discretion is not an unfettered discretion and has to be exercised reasonably after taking into consideration the relevant facts and circumstances. The High Court has proceeded on the basis that rehabilitation appointment has to be given in all cases where it becomes due because of death of an employee in harness or by his permanent disability and it can be refused only in certain circumstances as indicated by the High Court. In our opinion, the discretion of the competent authority cannot be thus fettered. As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of n employee does not entitled his family to compassionate appointment."

Considering the aforesaid facts the petitioner once appointed on class IV post cannot claim subsequently for class III post as in Birendra Prasad Vishwakarma vs. Chief Medical officer Ballia and others, as under:

"Pursuant to U.P. Recruitment of Dependent of Government Sevants Dying in Harness Rules, 1974 called in short Rules 1974, hereinafter, the petitioner was given appointment to Class IV on

account of death of his father. The petitioner was High School (Sic) only and had appeared in the Intermediate examination at relevant time and has passed the Intermediate subsequently. He claimed that the appointment to the post on which he has been engaged on compassionate grounds was not in consonance to the qualifications he possessed, whereas he was to be posted as Basic Health Worker in Class III category and his representation to that effect was considered by the concerned authority ……..Admittedly the petitioner was not having a qualification because at the relevant time he was High School (Sic) only.

I have gone through the contentions of the writ petition and I find that relevant time the petitioner was only 'High School' and was not having the minimum qualification of Intermediate which he acquired later on therefore the benefit of same could not be given to him and his case could not have been considered in view of the (1994) 2 SCC 723, U.P. Public Service Commission vs. Alpana to the post of Class III."

Similar view has been taken in the case Bhupendra Kumar vs. District Inspector of Schools, Aligarh and others 2001 (1) U.P.L.B.C. 478. The relevant finding are quoted below:

> *"The question which has arisen for consideration is whether the petitioner has any right to claim appointment on class III post of teacher or clerk and what is the effect of refusal of the petitioner to join on the class IV post on which DIOS appointed him on 21.10.99 which has been refused by the petitioner. Appointment on compassionate ground to the dependents of teaching or non teaching staff working in the institute was provided for the first time by Government order dated 23.9.1981. It said that where such an employee dies in harness,*

one member of the family of deceased having prescribed qualification for non teaching post will be given appointment as early as possible, if he so desires. The object for granting appointment on compassionate ground is to enable the family of deceased employee to tide over the sudden crisis, which has occurred due to the death of sole bread earner of the family. Such appointments are made purely on humanitarian consideration with an object to provide the family some source of livelihood. The appointment is given by making a departure from the general provisions for making appointment to a post. It is in the nature of exception to the general provision. It cannot be treated as creating a right which could be enforced at will. The DIOS appointed the petitioner on Class IV post as no class III post was available on which the petitioner could be appointed, therefore, the petitioner could have accepted the appointment and joined on class IV post He has no legal right to claim appointment as per his qualification on class III post as the appointment granted on compassionate ground is an exception to the general provisions of recruitment. If the petitioner declined to accept the appointment on class IV post on which he was appointed by the DIOS then the class IV was liable to be filled by the DIOS by appointing some other candidate who might by claiming appointment on compassionate ground or where no such candidates were available then the post was liable to be filled by the appointing authority of the institution. But it could not kept reserved for the petitioner that he will join on it as and when he desires".

In the present case the petitioner is working since 1987 as a class IV employee. The petitioner, therefore, is not entitled for any relief of promotion on the compassionate ground at present.

However, the petitioner has alleged that other class IV employees have already been promoted in class III but the petitioner has not been promoted when the petitioner is eligible otherwise also. Further the Executive Engineer has already made a recommendation for the promotion of the petitioner vide letter dated 24.8.1992 and 3.9.1992.

The petitioner may file a fresh representation within three weeks before the Authority concerned with regard to the aforesaid facts that the petitioner is otherwise eligible for promotion. The authority concerned shall consider the aforesaid representation in the light of the aforesaid observations. If the petitioner qualifies the eligibility criteria of promotion in class III other than on the compassionate ground, the authorities concerned shall give proper hearing to the petitioner and shall dispose of the same within three months by a reasoned order.

Consequently with the aforesaid observations the writ petition is disposed of.

(Rajesh Tandon J.)

15.10.2003
*Dhyani